

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK09-83001-TJM
))
MATTHEW RAYMOND VASHON and) CH. 7
CARRIE ANN VASHON,))
))
 Debtors.))

ORDER

Hearing was held in Omaha, Nebraska, on June 6, 2011, on a notice issued by the clerk of this court on May 17, 2011, indicating that Debtors are ineligible for a discharge (Fil. #63), and an objection by Debtors (Fil. #67). Roxanne Alhejaj appeared for Debtors. Evidence was admitted, and the matter was taken under advisement.

For the reasons set forth below, the objection is overruled.

On April 30, 2004, Debtors filed a Chapter 13 proceeding in this district, Case No. 04-81472. On June 26, 2007, Debtors received their Chapter 13 discharge in that case. On November 6, 2009, Debtors filed this case as a new proceeding under Chapter 13 of the Bankruptcy Code. Subsequently, Debtors filed a motion to convert to Chapter 7, which motion was granted on May 17, 2011.

11 U.S.C. § 727(a)(9) provides that, subject to certain inapplicable exceptions, a debtor is not entitled to a Chapter 7 discharge if debtor has been granted a discharge in a Chapter 13 case “commenced within six years before the date of the filing of the petition,” Debtors do not dispute that they are not eligible for a discharge under the terms of 11 U.S.C. § 727(a)(9) since this case was commenced within six years after the prior case was commenced. However, Debtors would be entitled to a discharge if they commenced a new case under Chapter 7 as of the current date. Specifically, the prior case was commenced on April 30, 2004. Six years later Debtors were free to file a new Chapter 7 case and obtain a Chapter 7 discharge.

Debtors are asking the court to allow them to obtain a Chapter 7 discharge regardless of their ineligibility under 11 U.S.C. § 727(a)(9). Their position makes quite a bit of sense – they would be entitled to a discharge if they dismissed the case and refiled a new Chapter 7 case, so why not allow them the discharge now without refiling. The answer is straightforward – it is prohibited by the Code. As indicated, it is undisputed that Debtors are not entitled to a discharge in the present case. While I certainly agree with Debtors that allowing the discharge in the present case is the most efficient path, I cannot enter an order that on its face violates the Bankruptcy Code.

IT IS, THEREFORE, ORDERED that Debtors' objection (Fil. #67) is overruled.

DATE: September 2, 2011.

BY THE COURT:

/s/ Thomas L. Saladino
Chief Judge

Notice given by the Court to:

*Roxanne Alhejaj
Joseph H. Badami
United States Trustee

Movant(*) is responsible for giving notice to other parties if required by rule or statute.